

LAWLER, METZGER, KEENEY & LOGAN, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

REGINA M. KEENEY
gkeeney@lawlermetzger.com

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

November 22, 2011

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Petition for Declaratory Ruling Concerning Broadband Operations in the
800 MHz ESMR Band
WT Docket No. 11-110
Notice of Ex Parte Meeting*

Dear Ms. Dortch:

On November 18, 2011, Lawrence Krevor, Trey Hanbury, James Goldstein and Richard Engelman of Sprint Nextel Corporation ("Sprint"), Charles Logan of Lawler, Metzger, Keeney & Logan, LLC, and I met with the following members of the Commission staff concerning the above-referenced proceeding: Austin Schlick, David Horowitz, and Steven Spaeth of the Office of General Counsel; John Leibovitz, Roger Noel, and Brian Regan of the Wireless Telecommunications Bureau; and David Furth and Michael Wilhelm of the Public Safety and Homeland Security Bureau.

The issues discussed during the meeting are summarized in the attached presentation, copies of which were distributed during the meeting. We also provided Commission staff cites to the following Commission staff decisions granting declaratory rulings: (1) *County of Los Angeles*, Order, 16 FCC Rcd 2227 (Public Safety and Private Wireless Div. 2001); (2) *Mr. Warren C. Havens*, Letter, DA 02-2024 (Public Safety and Private Wireless Div. 2002) (2002 FCC LEXIS 4077); and (3) *Petition for a Declaratory Ruling Regarding Negative Option Billing Restrictions of Section 623(f) of the Communications Act and the FCC's Rules and Policies*, Declaratory Ruling, MB Docket No. 10-215, DA 11-291 (Media Bureau rel. March 1, 2011). *See also Hughes Network Systems, LLC*, Declaratory Ruling, 26 FCC Rcd 8521 (Int'l Bureau 2011) (International Bureau, acting under delegated authority, granting declaratory ruling to permit UK-authorized satellite operator access to U.S. market).

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Pursuant to section 1.206(b)(2) of the Commission's rules, 47 C.F.R.
§ 1.1206(b)(2), this *ex parte* notification and the attachment are being filed electronically
for inclusion in the public record of the above referenced proceeding.

Respectfully submitted,

/s/ Regina M. Keeney
Regina M. Keeney

Attachment

cc: Austin Schlick
David Horowitz
Steven Spaeth
John Leibovitz
Roger Noel
Brian Regan
David Furth
Michael Wilhelm



Broadband Technologies in the 800 MHz ESMR Band

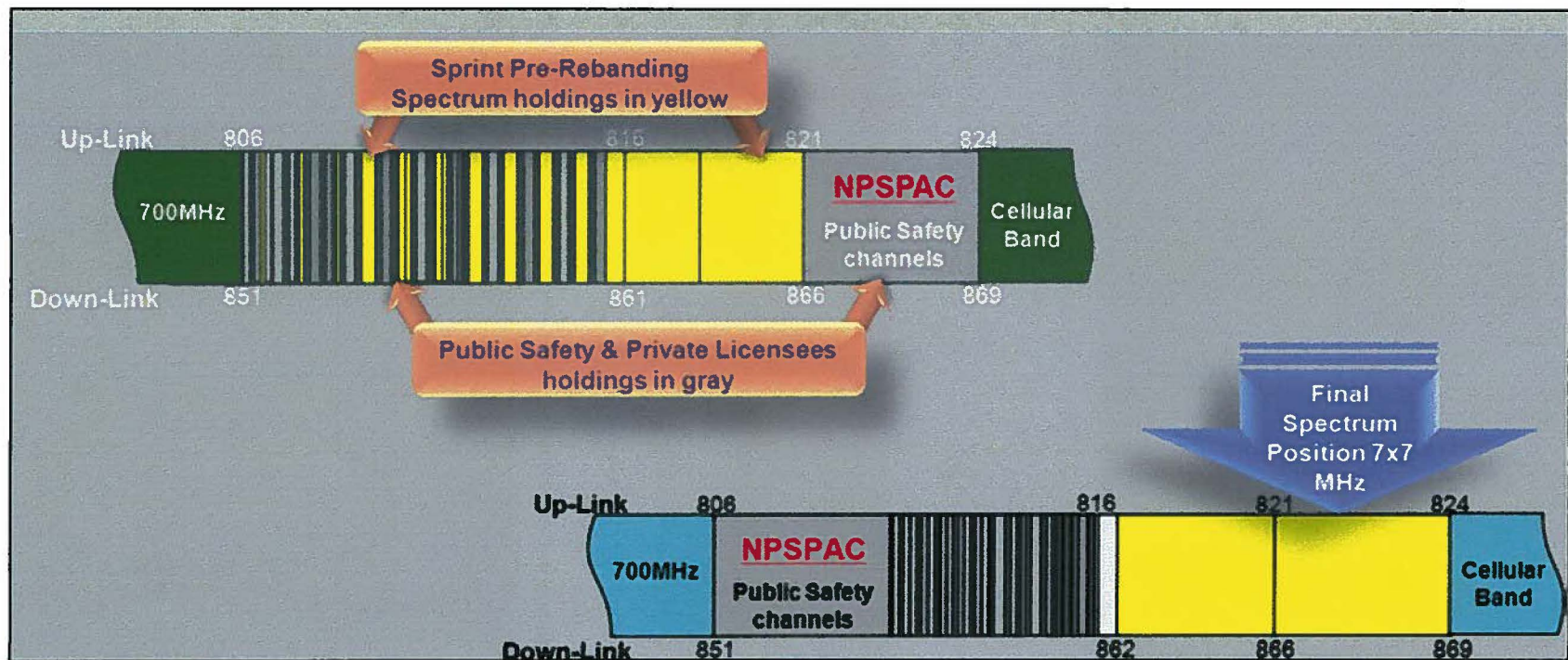
*November 18, 2011
WT Docket No. 11-110*

Overview

- Sprint seeks to deploy broadband technology in the 800 MHz ESMR band
- Sprint's planned deployment, including use of channel bandwidths exceeding 25 KHz, is permitted by FCC rules adopted in 1995 to give geographic-area ESMR licensees the technical flexibility to compete with cellular and broadband PCS operators
- Sprint's planned deployment does not require a rulemaking and is not governed by channel bandwidth limits adopted in 1982 that apply to traditional, non-ESMR private radio operations
- Sprint will continue to comply with well-established FCC rules and procedures to protect public safety systems against interference

Sprint's 800 MHz ESMR Spectrum

- Sprint holds or will soon hold 14 MHz of geographically licensed contiguous spectrum in the 800 MHz ESMR band across much of the country:



Sprint's Plan to Use ESMR Spectrum to Promote Broadband

- Under its “Network Vision” initiative, Sprint is deploying next generation base station equipment that will operate across all of Sprint’s licensed spectrum and promote the efficient use of Sprint’s spectrum for mobile broadband service
- Under the plan, Sprint will incorporate its 800 MHz ESMR spectrum into its existing CDMA network and gradually phase out its 800 MHz iDEN® network
- Sprint’s plan will benefit consumers by expanding network coverage and capacity and increasing broadband data speeds

Sprint's Filing

- While iDEN® is a 2G “narrowband” technology that operates on non-contiguous channels, 3G CDMA technology uses contiguous spectrum and occupies a 1.25 MHz bandwidth to provide broadband service to customers
- In fall 2010, Sprint began equipment authorization process for 800 MHz CDMA deployment
- On June 3, 2011, Sprint filed a petition for a declaratory ruling to confirm that current rules in part 90, subpart S permit larger than 25 kHz bandwidth operations in the 800 MHz ESMR band
- The petition appeared on public notice on June 30 – vast majority of commenters either supported or had no significant objection to Sprint's petition

Section 90.209 Does Not Apply

- “Unless specified elsewhere,” section 90.209 restricts licensees subject to the rule to no larger than a 20 kHz bandwidth for devices operating with 25 kHz channel spacing at 800 MHz (emphasis added)
- The FCC adopted section 90.209 in 1982 to apply to traditional private radio systems
- Since that time, FCC orders, including a 1995 Order establishing geographic area licensing in the ESMR band, have made clear that subpart S of part 90 provides ESMR licensees flexibility to deploy broadband technologies
- Subpart S states that “in case of conflict [with other sections of Part 90], the provisions of this subpart shall govern with respect to licensing and operation in these frequency bands” (section 90.601)

1995 Order Granted ESMR Licensees Flexibility to Deploy Broadband Channels

- 1995 Order established contiguous blocks of 800 MHz ESMR spectrum subject to flexible technical rules to promote regulatory parity and allow ESMR licensees to “compete effectively with ... cellular and broadband PCS systems”
- 1995 Order rejected a “predefined channelization plan” that would limit ESMR licensee technological options, concluding that “contiguous spectrum is an essential component of the wide area licensing proposal we adopt today because it will give licensees the flexibility to use technologies that can operate on either contiguous or non-contiguous spectrum”
- 1995 Order explicitly contemplated ESMR licensees deploying CDMA and broadband technologies on the Upper 200 Channels

1995 Order Specified Flexible Technical Rules in Subpart S to Govern EA Licensees

- EA licensees granted “the right to use any available spectrum within the EA licensee’s designated spectrum block on a self-coordinated basis, including full discretion over channelization of available spectrum within the block (on condition that emission mask requirements are met, and co-channel interference protection is afforded to incumbent licensees and co-channel EA licensees in neighboring EAs)” (Emphasis added)
- New ESMR technical rules impose no channel bandwidth limits
 - > Section 90.691 establishes out-of-band emissions requirements that apply only to the “outer” channels of EA licenses because “these channels alone have the potential to affect operations outside of the EA licensee’s authorized bandwidth”
 - > Section 90.683(a) states that EA-based licensees “may construct and operate base stations using any of the base station frequencies identified in their spectrum blocks” provided they comply with co-channel, border area, and field strength requirements
 - > Channel bandwidth limits would undercut Commission’s decision in 1995 to give ESMR licensees “the opportunity to deploy a multiplicity of technologies”

- 800 MHz SMR R&O, 11 FCC Rcd 1463, ¶¶ 3, 52, 101, Appendix A (1995)

Sprint's ESMR Licenses Contain No Channel Bandwidth Restrictions

- Section 90.209(a) provides that FCC authorizations subject to that rule will specify an emission designator representing the class of emission authorized and the specified necessary bandwidth
- Since the 1995 Order, the FCC has issued 4700 EA licensees in the 800 MHz band to Sprint – none of these licenses have included any provision specifying emission designators and/or channel bandwidths
- The absence of these designators further confirms that the flexible technical rules in subpart S, not section 90.209, apply to Sprint's ESMR licenses

No Rule Changes Are Necessary

- A rulemaking proceeding is unnecessary
 - > Sprint does not seek to modify any existing FCC rule
 - > The flexible technical rules in subpart S, not section 90.209's channel bandwidth limits, apply to Sprint's operations in the ESMR band
- A rulemaking would be burdensome
 - > A rulemaking proceeding would delay the deployment of mobile broadband, undermining a key FCC public interest goal
 - > Scarce Commission resources would need to be devoted to a rulemaking proceeding as well as numerous waiver requests Sprint would file seeking interim authority to deploy CDMA